IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 21ST JUNE 2007 / 31ST JYAISHTA 1929

Crl.Rev.Pet.No. 958 of 1999()

CRA.196/1997 of ADDL. SESSIONS COURT, THRISSUR
ST.3041/1995 of JUDL. MAGISTRATE OF FIRST CLASS COURT, CHAVAKKAD

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REVN. PETITIONER: APPELLANT/ACCUSED

C.P.WILSON, S/O.CHEMMANNUR PAUL
CHEMMANNUR HOUSE, PAVARATTY P.O.
THRISSUR DISTRICT

BY ADV. SRI.M.UNNIKRISHNA MENON
SRI.K.PADMANABHAN

RESPONDENTS: RESPONDENT/COMPLAINANT & STATE

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1. STATE REPRESENTED BY THE FOOD INSPECTOR
CHAVAKKAD CIRCLE, CHAVAKKAD

2. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 21/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.R.P.NO.958/99

ORDER ON CRL.M.P.NO.4426/1999 IN CRL.R.P.NO.958/99

DISMISSED

21.6.2007 SD/- K.R.UDAYABHANU, JUDGE

/TRUE COPY/

P.A. TO JUDGE

K.R.UDAYABHANU, J

Crl.R.P.No.958 of 1999

Dated this the 21st day of June, 2007

O R D E R

The revision petitioner stands convicted for the offence under Sections 2(i)(a)(h)(j)(1), 7(1) and Section 16(1)(a)(ii) of the PFA Act and Rule 28 of P.F.A. Rules, 1955 and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for one month.

2. The prosecution case is that the complainant, Food Inspector on 3.1.1994 at 12 O'clock in the noon took sample of cake from M/s.Paulson Bakery owned by the accused and the same on examination of the Public Analyst Laboratory was found to contain non permitted coal tar die Rhodamine B and hence is adulterated. Another part of sample was sent to the Central Food Laboratory vide Section 13(2) of P.F.A. Act which also returned the same finding. The points raised by the counsel for the petitioner is that Ext. P14 certificate of analysis from the C.F.L. did not contain the distinguishing marks as contemplated

in form I of appendix A as per which the court below forwarded the sample to the C.F.L. As contained in Ext. P14 report of C.F.L., the distinguished number mentioned is C.C.81/94. It is contended that the above number can never be the distinguishing number on the container put by the Food Inspector at the time of sampling. C.C.81/94 is the case number. The mahazar did not contain the above number. The distinguishing number noted in Ext. P13 the public analyst report is T.C.R.D.L(H)A-50-14034. The same does not find a place in Ext. P14 the report of CFL. I find that the above contention raised before the courts below have not been properly answered. Considering the fact that the penal provisions in the PFA Act being of a stringent nature, strict compliance of the formalities are envisaged. The contention raised in this regard is that it cannot be held that it is the same sample forwarded by the Food Inspector to the Local Health Authority is the sample that has been forwarded to the C.F.L. Further, the copy of the form No.I seen in the records contains a number of corrections. In the circumstances, I find that the

above discrepancy is a fact that enables the accused to claim the benefit of doubt.

3. So also, the counsel has contended that Ext. P4 mahazar is silent with respect to the details of the packing of the sample. It is a printed format. It did not contain any details as to the packing. The evidence of PW1, the Food Inspector that the sample were packed in polethene bag and the same was closed in the machine available at the shop etc. have not been mentioned in Ext. P4. The Food Inspector has erred in not mentioning the above details in a case of this nature. So also, Ext. P8 receipt of the Local Health Authority in token for having received the sample contains correction with respect to the date. There is an overwriting and the date is corrected as 4th from 5th failing which the effect would be violation of Rule 17(b) of the Rules that the remaining two parts of the sample etc. should be forwarded to the LHA immediately but not later than the succeeding working day. The purchase of the cake was on 3.1.1994.

4. I find that the above circumstances brought out in the

evidence has not been considered by the courts below. I find that the cumulative effect of the above aspects of the evidence enables the accused to claim the benefit of doubt. In the circumstances, the findings of the court below is set aside. The accused is acquitted.

The revision petition is allowed.

K.R.UDAYABHANU,
JUDGE

csl